BEFORE THE TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS

In the Matter of: Tennessee Department of Environment and Conservation.	)	
Petitioner,	)	
	)	APD Case no. 04.02-244954J
vs.	)	
Town of Tellico Plains, Tennessee	)	SDWA no. DWS23-0190
Respondent.	)	

THE TOWN OF TELLICO PLAINS'
SECOND AMENDED
PETITION FOR APPEAL

Comes now into Court, The Town of Tellico Plains ("**The Town**"), pursuant to T. C. A. § 4-5-315(b), and herewith files its Second Amended Petition for Appeal to the Board of Water Quality, Oil, and Gas (the "**Board**") for the Board to review and set aside the Administrative Law Judge's Order Granting TDEC's Motion to have The Town pay TDEC $5,340.00 for costs incurred by the Administrative Procedures Division. In support, The Town would show that the ALJ's Order is in error and that TDEC's Motion to have The Town pay TDEC money based on costs incurred by someone else otherwise has no merit for the following reasons.

1. The ALJ's Order

The ALJ ordered The Town to pay TDEC $5,340.00 for four reasons as follows: (1) the SDWA authorizes recovery of costs, (2) the factual finding that the Administrative Procedures Division's costs were billed monthly and already paid by TDEC, (3) Tenn. R. Civ. P. 54.04(2) permits TDEC to be paid these costs pursuant to Tenn. Comp. R. & Regs. 1360-04-01-.16, and (4) TDEC was the prevailing party. The Order is in error for no less than five (5) reasons now discussed.

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First, the Section of the SDWA statute cited by the ALJ does not authorize the recovery of costs. T. C. A. § 68-221-713(a) allows for the recovery of damages incurred via a Director's Order and Assessment. That is, damages incurred before the issuing of the Director's order and Assessment. Damages are different than costs, and a clerk's bill of costs are not a litigant's damages. In this case, TDEC's only damages of $12.40 were dutifully set forth in the Director's Order and Assessment.

Second, nowhere in the record is there the fact that TDEC has paid, or even incurred, the $5,340.00 in costs from the Administrative Procedures Division (hereafter "**APD**"). Appended to TDEC's Motion is the affidavit of TDEC's counsel Samantha Buller-Young. Ms. Buller-Young does not say that TDEC has paid the APD $5,340.00. She only says that attached to her affidavit is an accounting of the "costs associated with Docket No. 04.02-244954J." Thus, the accounting is an accounting of the APD's costs, not TDEC's costs. Exhibit 1 to Ms. Buller-Young's affidavit is the accounting from the APD. Exhibit 1 begins with a statement from Stephanie Shackelford, the Director of the APD. Ms. Shackelford does not say this is a list of $5,340.00 in charges paid by TDEC. She mentions the charges are costs "assessed," but she does not say to whom the charges are assessed. Frankly, by use of the word "assessed" she likely means "costs recorded" because in the second paragraph of her statement she expressly states, "**THIS IS NOT A BILL**" (emphasis added). Further, based on the last sentence of that same paragraph, it would seem the charges have yet to be assessed/billed to anyone. She says, "the Administrative Procedures Division will bill the responsible entity directly." So, it would seem that to date, no one has been billed. Notwithstanding the absence of facts in the record, the ALJ in its Order states as fact that TDEC has been billed and has paid the Exhibit 1 charges. The Order states:

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> The costs billed to the Department by the Administrative Procedures Division (APD) are … billed monthly to the Department … [and] the Department pays these costs …

In short, factual findings not supported by the record would seem to be inappropriate and in error.

Third, the ALJ held that Tenn. R. of Civ. P. 54.04(2) is a statute within the meaning of Tenn. Comp. R & Regs. 1360-04-01-.16 entitling TDEC to recovery the APD charges. Section 1360-04-01-.16 is not a rule entitled TDEC to costs. That Section simply requires that if a statute allows for the recovery of costs, a party must file a motion. However, Rule 54.04(2) is not a statute; it is a rule of procedure. Thus Section 1360-04-01-.16 may not be used to invoke entitlement to recover anything that is not statutory.

Fourth, Rule 54.04(2) is a rule of state-court procedure permitting the recovery of a state-court litigant's discretionary costs. Rule 54.04(2) state-court discretionary costs are things like deposition costs and interpreter fees. Rule 54.04(2) is construed quite narrowly to include just those things included in Rule 54.04(2). Administrative Procedures Division charges are not expressly mentioned in Rule 54.04(2), and so Rule 54.04(2) may not be used as a basis for the ALJ to make The Town pay TDEC the APD charges.

Fifth, TDEC is not the prevailing party. TDEC lost over 80% of its case in large part for violating The Town's due process rights (i.e. TDEC abusing its power). The contingent penalties were what gave TDEC power over the powerless, and that has been taken away. TDEC has been told what it did to The Town was wrong, which means that what it has been doing in the past, and presently, is wrong, and could hardly be regarded as a glorious victory.

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2. The Town's Other Reasons

For the reasons in The Town's initial appeal, the Initial Order should be changed as requested and with that any taxing of the APD's costs to The Town set aside.

Respectfully submitted this ___22nd _____ day of October, 2025.

/s/ Brian C. Quist

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served upon the following persons or entities in the manner indicated on this _22nd _ day of October 2025.

Via Email Samantha.Buller-Young@tn.gov

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